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North Dakota Supreme Court Decisions

North Dakota Law Review Associate Editors

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One of the greatest jury lawyers that we ever had in this state was a man who used short words and simple language. He talked to the jury in their own language, realizing that juries are made up of uneducated men as well as the educated. The farmer knew what he meant because he used the words of the farm. The shop keeper missed nothing because he knew shop. He was able at one term of court to win twenty-two verdicts out of twenty-five cases on the calendar.

Young lawyers will impress juries more with strong, simple language that each juror will understand, rather than by trying to impress them by using complicated legal terms and long, involved phrases. After all the point in view is to win the case, rather than to impress the jury with the learning of the lawyer.

M. A. HILDRETH, President.

MEMBERS OF OUR ASSOCIATION WHO HAVE PASSED AWAY RECENTLY

Anthony Faber, 65 years of age, of Bismarck, N. D., passed away on March 21, 1936; he had practiced in Morton and Burleigh counties since October 16, 1906.

Harry W. Stewart, 32 years of age, of Langdon, N. D., passed away April 25th, 1936; he had been assistant states attorney of Cavalier county for the past seven years.

NORTH DAKOTA SUPREME COURT DECISIONS

G. Gerhardt, et al, Plaintiffs and Appellants, vs. Etheline Heid, et al, Defendants and Respondents.

SYLLABUS: 1. The Constitution of North Dakota guarantees to all "the free exercise and enjoyment of religious profession and worship without discrimination or preference." (Const. N. D. sec. 4.)

2. Under the Constitution of North Dakota (Const. N. D., sections 147-152) no money raised for the support of the public schools of the state may be appropriated or used for the support of any sectarian school; all schools supported by a public tax must remain under the absolute and exclusive control of the state, be open to all the children of the state and free from sectarian control.

3. A sectarian school is a school affiliated with a particular religious sect or denomination or under the control or governing influence of such sect or denomination.

4. Control is the act or fact of controlling; power or authority to control; directing or restraining domination.

5. The employment as teachers in the common schools of North Dakota of nuns, members of a religious society of the Roman Catholic Church, who are duly qualified as teachers under the laws of the state of North Dakota; is not violative of sections 147 or 152 of the state constitution.

6. What particular teachers, of those who possess the legal qualifications to teach, shall be employed is a matter for the directors of the school district to determine and is not ordinarily a matter for judicial consideration.

7. The conduct of sectarian religious exercises and the giving of sectarian instruction in any of the public schools of North Dakota is prohibited by the constitution.

8. The fact that a teacher in the public schools of North Dakota, who is a member of a religious order, wears the habit of the order while engaged in teaching and contributes a portion of her earnings to the order, standing alone cannot be said to make the school a sectarian school, to remove the school from the absolute control of the state, or to place the school under sectarian control.

From a judgment of the District Court of Stark County, Miller, J., plaintiff's appeal.

AFFIRMED. Opinion of the Court by Christianson, J.

Filed April 15, 1936.

State of North Dakota upon the relation of A. F. Lehr, Respondent, vs. J. A. Weiler, as County Auditor of LaMoure County, North Dakota, Appellant.

SYLLABUS: 1. The filing of a notice with the County Auditor by the owner of land sold for taxes, claiming the benefits of Chapter 280 of the Session Laws of North Dakota, 1935, is by the express terms of that act made a condition precedent to the extension of the period of redemption thereunder.

2. Record is examined, and it is held, that since the owner of the land filed no notice claiming an extension of the period of redemption from tax sale as provided by Chapter 280 of the Session Laws of North Dakota, 1935, the County Auditor cannot refuse to issue a tax certificate upon the ground that said chapter has extended the period of redemption.

APPEAL from the District Court of LaMoure County, Hutchinson, J.

AFFIRMED: Opinion of the Court by Morris, J.

A. J. Goetz, Plaintiff and Appellant, vs. G. A. Hubbell, Defendant and Respondent.

1. Under the statute of frauds an agreement for the sale of real property is invalid unless the same, or some note or memorandum thereof, is in writing and subscribed by the party against whom the agreement is sought to be enforced.

2. To render such memorandum sufficient, it is not necessary it be signed by the other party to the agreement.

3. Such memorandum need not be a complete contract in itself. It is the written evidence of the contract, and while parol evidence may not be introduced to vary the terms of such memorandum, nevertheless parol evidence may be introduced to explain the same and make it certain.

4. Written receipts, signed by the party to be charged, which show that part of the purchase price of real estate described in the receipt has been paid by the other party and which sets forth the purchase price and a description of property is a sufficient memorandum to take an agreement out of the Statute of Frauds and parol evidence may be introduced to supply proof in harmony with the statements made in the receipts and in explanation thereof.

5. With proof of the contract furnished by the memorandum as required, the court will enforce the contract as made by the parties, and

the party sought to be charged cannot be required to accept payment in any other manner or form than that agreed upon.

SYLLABUS: Appeal from the District Court of Sheridan County, Hon. R. G. McFarland, Judge. MODIFIED AND AFFIRMED. Opinion of the Court by Burr, J.

ALIMONY LIMITING LAW RULED CONSTITUTIONAL

Estranged husbands and wives Saturday studied the Illinois supreme court's decision approving a law limiting alimony to ascertain how it would affect their cases.

The tribunal ruled Friday at Springfield that the Graham act—providing that a childless woman can claim alimony for only two years—was constitutional.

By the same 4 to 3 decision, the jurists also upheld the act's provision that two years of separate maintenance may be classed as legal desertion and used as grounds for a final divorce decree.—Associated Press.

INSTITUTE MAKES PROGRESS IN TORTS RESTATEMENT

At the May meeting of the American Law Institute the Torts group is submitting for consideration and suggestions a substantial amount of material in the law of Deceit and Defamation. The interesting and difficult problems involved in both these thorny topics have been developed and dealt with as well as the group can do it without the further help which is brought by approaching from different points of view.

In the meantime, preliminary work goes forward into other parts of that conglomerate subject we call Torts. The next set of problems for consideration are those commonly known as "Slander of Title." The name is not a good one. It has just enough connection with the problems involved so that it is not wholly misleading. The conduct which may create liability upon a defendant is something like that involved in liability for slander. And the thing defendant does as a basis of liability is the speaking or writing of words, as in defamation cases. The injury of which the complainant complains is, in some cases under this head, something which casts doubt upon his "title" to land or chattel. But the scope of invasion of the plaintiff's interest is not limited to title cases and the rules which determine defendant's liability show only vague similarity with the rules determining liability for defamation. Labels in law or elsewhere have no intrinsic importance. We could pin a Greek letter to the various types of problems in the field of Torts as a means of classification and the device would work well enough if lawyers knew what was comprehended under each letter. The danger of an inaccurate label is that it may mislead one who relies upon the label instead of examining the product. This is as true in law as it is in the field of medicinal products.

The accurate description of the problem in which work is begun is found in the phrase "Language Which Invades Interests in Vendibility of Property and Other Interests." Perhaps from further thought upon the subject a title equally accurate and less ponderous can be found. The subject is less well known and less litigated than most of the questions involved in negligence and even libel and slander. There is comparatively little literature upon it. But it is practically important and apt to become increasingly so in an era where legal disputes have shifted from questions on land titles and the like to problems arising out of a complicated industrial and commercial society.